

1 Michael J. Bloom, Esq.
2 **MICHAEL J. BLOOM, P.C.**
3 State Bar No. 4897; P.C.C. No. 4576
4 100 North Stone Avenue, Suite 701
5 Tucson, Arizona 85701
6 Telephone: (520) 882-9904
7 Facsimile: (520) 628-7861
8 Mike@michaeljbloom.net
9 Minute_Entries@michaeljbloom.net

10 Attorneys for Plaintiff Terri Jo Neff

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF COCHISE**

13 TERRI JO NEFF, a single woman,

No. CV201900323

14 Plaintiff,

15 vs.

**MOTION FOR CHANGE OF JUDGE
FOR CAUSE**

16 COCHISE COUNTY; COCHISE COUNTY
17 BOARD OF SUPERIVORS; ARLETHE
18 RIOS, COCHISE COUNTY CLERK,

Assigned to the Hon. James L. Conlogue,
Div. V

19 Defendants.

20 Plaintiff Terri Jo Neff, by and through her attorney undersigned, hereby requests a change
21 of judge from Honorable James L. Conlogue, Division V, as provided by Rule 42.2 of the
22 Arizona Rules of Civil Procedure, on the grounds that Judge Conlogue, as presiding judge of
23 the Cochise County Superior Court, necessarily works with the Cochise County Board of
24 Supervisors over budgetary and other matters, and, as a result, has an interest in this matter.
25 Additionally, Judge Conlogue was a witness in *Welch v. Cochise County Board of Supervisors*,
26

1 a related lawsuit. As a result, grounds exist to remove Judge Conlogue from presiding over this
2 matter pursuant to A.R.S. § 12-409.
3

4 The grounds for this motion are set forth in the accompanying Memorandum of Points
5 and Authorities, which is attached hereto and incorporated herein by reference.
6

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 This case arises as a result of the action of the Cochise County Board of Supervisors in
9 appointing one of its own members, Pat Call, to fill a vacancy as justice of the peace for Precinct
10 5 in the County's Sierra Vista Justice Court. Subsequent to that appointment, David Welch, a
11 citizen of Cochise County, Arizona, filed a lawsuit challenging that appointment. The Cochise
12 County Attorney's Office, on behalf of the Cochise County Board of Supervisors, retained a
13 private law firm, the Jellison Law Offices PLLC, to represent the Board in connection with the
14 lawsuit filed by David Welch.
15

16 Plaintiff Terri Jo Neff is a freelance reporter in Cochise County, Arizona. Plaintiff Neff
17 sought a copy of the contract entered into between the Cochise County Attorney's Office on
18 behalf of the Cochise County Board and the Jellison Law Offices pursuant to the Arizona public
19 records law. When the Cochise County Board refused to disclose that contract, Plaintiff brought
20 this statutory special action seeking to compel the Cochise County Board of Supervisors to
21 disclose the contract.
22

23 Judge James Conlogue is the presiding judge of the Cochise County Superior Court. On
24 September 23, 2019, Judge Conlogue was assigned to preside over this matter. As the presiding
25 judge of the Cochise County Superior Court, Judge Conlogue necessarily is required to interact
26


1 with the Cochise County Board of Supervisors on budgetary and other matters. *See, e.g.,* the
2 May 2, 2019 Minutes of the Cochise County Board of Supervisors. (Exhibit A)

3
4 Judge Conlogue was called as a witness in connection with the associated matter, *Welch*
5 *v. Cochise County Board of Supervisors*. See Minute Entry of March 8, 2019 (Exhibit B). As
6 presiding judge of the Cochise County Superior Court, Judge Conlogue has supervisory
7 authority over justices of the peace, including Justice of the Peace Pat Call.
8

9 As a result of the foregoing, Judge Conlogue has an interest in this matter and was a
10 witness in an associated underlying matter. Moreover, because of the foregoing, Judge
11 Conlogue's participation in this matter would give rise to the appearance of impropriety. *See,*
12 Arizona Code of Judicial Conduct, Rule 81; Rules of Supreme Court, Rule 1.2. For those reasons,
13 Judge Conlogue should be removed from this matter pursuant to Rule 42.2(b), 16 A.R.S. Rules
14 of Civil Procedure, and A.R.S. § 12-409.
15

16 RESPECTFULLY SUBMITTED this 7th day of October, 2019.

17 **MICHAEL J. BLOOM, P.C.**

18
19 
20 Michael J. Bloom
Attorney for Plaintiff Terri Jo Neff

21 Original of the foregoing electronically filed
22 this 7th day of October, 2019, via TurboCourt.

23 Copy of the foregoing mailed and/or emailed
24 this 7th day of October, 2019, to:

25 Honorable James L. Conlogue, Division V.
26 Presiding Judge

1 100 Quality Hill Road
2 P.O. Drawer CJ
3 Bisbee, AZ 85603
4 jconlogue@courts.az.gov
jtinney@courts.az.gov

5 Honorable Tim Dickerson, Division IV
6 Associate Presiding Judge
100 Quality Hill Road
7 P.O. Drawer CT
Bisbee, AZ 85603
8 tdickerson@courts.az.gov
9 acontapay@courts.az.gov

10 Court Administrator
11 100 Quality Hill Road
12 P.O. Box 204
Bisbee, AZ 85603

13 Christine J. Roberts
14 Civil Deputy County Attorney
15 Cochise County Attorney's Office
16 P.O. Drawer CA
Bisbee, AZ 85603
CVAttymeo@cochise.az.gov
Attorney for Defendants

17
18 By: 
19 Maria C. Chavez Romero
20
21
22
23
24
25
26

EXHIBIT A

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
WORK SESSION HELD ON
Thursday, May 2, 2019**

A work session of the Cochise County Board of Supervisors was held on Thursday, May 2, 2019 at 1:00 p.m. in the Board of Supervisors' Executive Conference Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Peggy Judd, Chairman; Ann English, Vice-Chairman; Thomas E. Borer, Supervisor (telephonic)

Staff Present: Edward T. Gilligan, County Administrator
Sharon Gilman, Associate County Administrator
Dan Duchon, Budget Manager
Arlethe G. Rios, Clerk of the Board

Attendees: James Conlogue, Presiding Judge, Superior Court
Eric Silverberg, Court Administrator
Teresa Rockrich, Probation Finance Manager
Armando Arias, Deputy Chief Adult Probation Officer
James Blount, Juvenile Detention Director
Bran Miller, Clerk of the Court Operations Supervisor
Terry Bannon, Judge, Pro-Tem
Rita Shipley, Budget and Finance Director, Courts
Tracey Romero, Human Resources, Court Administration
Vicki Barton, Chief Deputy Clerk of the Court
Amy Hunley, Clerk of the Court
Niltza Flores, Justice Court Administrator
Dan Duchon, Budget Manager
Lori Kilpatrick, Citizen

Chairman Judd called the meeting to order at 1:00 p.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

INTRODUCTIONS

ITEMS FOR DISCUSSION

Board of Supervisors

1. Budget Work Session - Discussion of County budget for Fiscal Year 2019-2020 specifically: Court Administration, Superior Court, Adult/Juvenile Probation, and the Clerk of the Superior Court's Office.

Mr. Silverberg gave an update on major projects.

Judge Conlogue stated he was present to answer any of the Board's questions and also wanted to alert them to several issues that might impact the County's budget in the future: increase in number of Return to Competency cases and a major shift in felony cases, which impacts the jury budget. He added that he would make these issues a priority before he retired in December of 2020.

Mr. Gilligan said that he would work with all stakeholders to address these issues and prepare solutions on how to resolve these concerns. He noted that he had a concern with how return to competency cases impacted the indigent defense budget and would like that fund line moved to the County Attorney's budget since they directly impact how those cases are handled.

Ms. Shipley went over actual budget figures for the current fiscal year and explained the proposed budget for the upcoming fiscal year. She discussed projects and salaries and explained how money had been moved around to address market salary adjustments and urgent projects.

Mr. Gilligan said he was impressed with the way the judicial departments had managed through policy changes instead of asking for the Board to fund any overages.

The Board thanked Judge Conlogue and Mr. Silverberg and their staff for the update.

Ms. Hunley presented figures for the Clerk of the Court's Office.

Judge Conlogue noted that the Clerk of the Court would be included in the main Court budget for the upcoming fiscal year.

Ms. Hunley went over several requests, but noted that they were small requests that would assist in stabilizing operations until she became more familiar with internal processes.

Mr. Gilligan said he did not think that accommodating these requests would be a problem. He stated that he had one other concern with increases to the indigent defense budget due to an increase in revocation cases.

Judge Conlogue said he would work with Mr. Gilligan to address this concern and noted that he feels very responsible regarding the success of the probation program.

Ms. Shipley noted that some juvenile funds would be used to address some projects instead of asking for additional funding from the general fund.

Mr. Gilligan said he did not have a concern with this proposal, but wanted to ensure that "maintenance of effort" jail requirements were followed.

Mr. Silverberg said one of his main projects before retiring in June was to ensure that a strategic plan process for the courts could be funded. He noted that a lot of the Board's success in accomplishing major projects was that a strategic plan was in place and he wanted to follow that model.

Judge Conlogue said that the only other point he wanted to discuss was his ability to have input on the justice court budgets and noted that it was in the Board's best interest to have the justice courts deal with him instead of coming to the Board with issues.

Mr. Gilligan said he would schedule a wrap up meeting for the entire court system.

Supervisor Borer said he did not have any questions but wanted to point out a mistake on the totals for the juvenile and probation budget.

Ms. Shipley stated that she would correct the mistake.

Chairman Judd thanked everyone for the information.

Chairman Judd adjourned the meeting at 2:20 p.m.

APPROVED:

Peggy Judd, Chairman

ATTEST:

Arlethe G. Rios, Clerk of the Board

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA, In and for the County of Cochise

JUDGE: HONORABLE MONICA STAUFFER
DIVISION: SEVEN
COURT REPORTER: Revolutionary Text LLC
INTERPRETER: -----

AMY J. HUNLEY, Clerk of the Superior Court
by: L. Bernice Grijalva (3/13/2019), Deputy Clerk

HEARING DATE: 03/08/2019

**DAVID WELCH, individually and on behalf of ALL
CITIZENS OF COCHISE COUNTY, PRECINCT FIVE**
Petitioner,

VS

**COCHISE COUNTY BOARD OF SUPERVISORS,
PATRICK G. CALL, ANN ENGLISH, AND
PEGGY JUDD,**

Respondents.

CASE NO: S0200CV201900060

**MINUTE ENTRY: SPECIAL ACTION AND
PETITION FOR WRIT OF MANDAMUS, PETITION
FOR INJUNCTIVE AND DECLARATORY RELIEF**

HEARING START TIME: 10:01 AM

HEARING END TIME: 1:06 PM

**PRESENT: Petitioner present in person and by D. Christopher Russell, Esq.
James M. Jellison, Esq. present in person on behalf Respondents**

Prior to commencement of proceedings, Petitioners Exhibits 1-13 and Respondent's Exhibits A-N were marked for identification purposes.

This matter came before the Court this date for a Special Action and Petition for Writ of Mandamus, Petition for Injunctive and Declaratory Relief.

The Court NOTED that she met with counsel before the hearing.

Counsel had no objection with Judge Stauffer to proceed with this hearing.

The hearing today is the Respondent's Motion to Vacate the Emergency Restraining Order issued on February 25, 2019 by Judge Cardinal.

Mr. Jellison addressed the Court with two preliminary matters.

Mr. Jellison called as a witness, the HONORABLE JAMES CONLOGUE, who, being duly sworn, was direct examined, cross examined, redirect examined and excused from further testimony. During this testimony, Petitioner's Exhibits 5-11 and Respondent's Exhibits A-N were admitted into evidence.

Mr. Jellison presented closing argument.

The Court inquired of Mr. Jellison.

Mr. Jellison responded to the Court.

Date: 03/08/2019 Case No.: S0200CV201900060

Minute Entry – Special Action and Petition for Writ of Mandamus, Petition for Injunctive and Declaratory Relief

Mr. Russell presented closing argument.

The Court inquired of Mr. Russell.

At 12:47 p.m., the Court called a brief recess.

At 12:59 p.m., the Court went back on the record with all the previous parties present.

Having heard the testimony, the arguments, as well as considered the pleadings here today;

The Court made the following FINDINGS:

- On February 14, 2019, a Special Action for Writ of Mandamus, Petition for Injunction and Declaratory Relief was filed by Petitioner, David Welch.
- On February 25, 2019 Petitioner filed an emergency petition entitled "Petition for Ex Parte Preliminary Injunction and Restraining Order".
- A Preliminary Injunction must be with notice unless it is a temporary restraining order and that can be without notice, but only if one specific facts are listed in the affidavit supporting immediate irreparable injury and that was provided by Petitioner's counsel in this matter and there were efforts to give notice, but they were minimal.
- The order must state the date and time of the hearing.
- The order must state describe the injury.
- The order must state why it is irreparable.
- The order must state why it was without notice.
- The order must be promptly filed.

The Court made FURTHER FINDINGS:

- Judge Cardinal's order failed to initially notify the parties of any conflict.
- The order fails to state the specific injury that would occur absent the granting of the order.
- The order fails to state why it is irreparable harm.
- The order fails to state why it was heard without notice.
- It is extraordinary when a Court holds any hearing when only one side is presented.
- Specific items must be listed in the order.
- There was an abuse of discretion.

The Court therefore; VACATES the emergency order and voids ab initio the emergency order signed by Judge Cardinal on February 25, 2019 at 12:44 p.m.

Proceedings concluded.

xc: e-mailed (c) by: bg date: 03/13/2019

☐ D Christopher Russell, Esq. (c) courtdocs@russellsllawfirm.com

☒ James M. Jellison, Esq. (c) jim@jellisonlaw.com

☒ Shawneen Serrano (c)

☒ DIV VII JAA (c) COCoynec@courts.az.gov

EXHIBIT C

1 Michael J. Bloom, Esq.
2 **MICHAEL J. BLOOM, P.C.**
3 State Bar No. 4897; P.C.C. No. 4576
4 100 North Stone Avenue, Suite 701
5 Tucson, Arizona 85701
6 Telephone: (520) 882-9904
7 Facsimile: (520) 628-7861
8 Mike@michaeljbloom.net
9 Minute_Entries@michaeljbloom.net

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13 TERRI JO NEFF, a single woman,

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14 Plaintiff,

AFFIDAVIT OF TERRI JO NEFF

15 vs.

16 COCHISE COUNTY; COCHISE COUNTY
17 BOARD OF SUPERIVORS; ARLETHE
18 RIOS, COCHISE COUNTY CLERK,

Assigned to the Hon. James L. Conlogue,
Div. V

19 Defendants.

20 STATE OF ARIZONA)
21) ss.
22 COUNTY OF PIMA)

23 Terri Jo Neff, upon her oath, avows as follows:

24 (1) I am the plaintiff in the above-captioned matter.

25 (2) I am familiar with Presiding Judge James Conlogue because of my work as a
26 journalist.

1 (3) I have respect for Judge Conlogue's integrity and ability as a judge. Nonetheless,
2 I believe that it would be inappropriate for Judge Conlogue to hear this matter, and that cause
3 exists to remove Judge Conlogue under A.R.S. § 12-409(B)(5).
4

5 (4) I believe that Judge Conlogue should not preside over this matter because he has
6 an interest in this matter. This matter is a public records request seeking the contract the Cochise
7 County Attorney's Office entered on behalf of the Cochise County Board of Supervisors with a
8 private law firm to represent the Cochise County Board of Supervisors in a lawsuit, *Welch v.*
9 *Cochise County Board of Supervisors, et al.* Mr. Welch alleged in that lawsuit that the Cochise
10 County Board of Supervisors violated state law by improperly appointed one of its own members
11 as a justice of the peace.
12

13 (5) Judge Conlogue was a witness in *Welch v. Cochise County Board of Supervisors,*
14 *et al.*, See Minute Entry dated March 8, 2019.
15

16 (6) Judge Conlogue, as presiding judge of Cochise County Superior Court, necessarily
17 works closely with the Cochise County Board of Supervisors on numerous issues, including
18 budgetary matters. See Minutes of May 2, 2019.

19 (7) Judge Conlogue, as presiding judge, has supervisory authority over Cochise
20 County justices of the peace, including the individual appointed by the Board in this matter.

21 (8) In this matter, I am also alleging the Cochise County Board of Supervisors,
22 through their appointed clerk, violated state law.
23

24 (9) I understand, on information and belief, that in his capacity as presiding judge,
25 Judge Conlogue directed the Court Administrator staff that *Welch v. Cochise County Board of*
26 *Supervisors, et al.* be assigned to a judge out of the county.

1 (10) The Code of Judicial Conduct requires judges to perform their duties in such a
2 manner to uphold "the independence, integrity, and impartiality of the judiciary."

3 (11) The above facts raise legitimate concerns as to whether Judge Conlogue can
4 guarantee that my case will be heard fairly.
5

6 DATED this 7th day of October, 2019.

7
8 
9 _____
TERRI JO NEFF

10 SUBSCRIBED AND SWORN TO before me this 7th day of October, 2019 by Terri
11 Jo Neff.

12
13 DATED this 7th day of October, 2019.

14 
15 _____
16 NOTARY PUBLIC



SERENA LARA
Notary Public - Arizona
Pima County
Expires 10/15/2020